R. Dis File No. 9 (1)

1939.

Collection No.

19/7/47 Mas 19/7

(3)

Pros. Serial Nos. 1 – 15

(36) P

Subject.

Grant of Succession Certificate in favour of Kalamma in the matter of the estate of Mallaichetar

Previous References.

Later References.

A

16/10/46

S. 97.—(Green).

MFP—1663 S&P—(M-2971)—24-6-38—100,000.

Dy. No. 4530 S.N.7.

(4)

One Thanga Bhujabaliah wants ten days' time to file objections to the petition at S.N.1. Further action may be deferred till 12-5-1939.

(para 4)

Dy.No.4797 S.N.8.

(5)

The opponent (Thanga Bhujabaliah) files objections to the petition at S.N.1. He has filed certified copies of proceedings in the Court of the Munsiff of Holenarasipur to show that he is the proper person to obtain succession certificate. As a matter of fact he has obtained a succession certificate in that Court after notice to the present petitioner. When the advocate for the petitioner calls at this office his attention will be drawn to the objections filed, and he will be asked to file his reply. The file will then be resumbitted with further noting on the merits of the case.

(para 5)

(9)

(10)

Please see S.N.1, S.N.8 and S.N.11.

The petition at S.N.1 is filed by Kalamma as widow of the deceased Mallaichar for succession certificate empowering her to collect the amount due under policy with the Oriental Government Security Life Assurance Co., Ltd., Bombay. The two brothers of the deceased have filed affidavits to the effect that they have no objection to the grant of the certificate in the name of Kalamma.

(11)

Cmp 14

One Tangabhujaballiah has filed objections (S.N.8) and prays that the succession certificate may be granted to him. He also states that he has obtained a succession certificate in the Court of the Munsiff of Holenarsipur in Mis Case No.272 of 1937-38. In that certificate it is stated as follows: "Policy No. 300165 on the life of Malliachari (policy was sold in Court auction and the petitioner was the purchaser of this bond) in Original Suit 333 of 30-31 and Execution Case No.719 of 32-33) being attached, in the above suit on the file of the Munsiff of Holenarsipur".

2 cmp 17.

(12)

≠ cmp 41.

In reply to the above objections Kalamma's advocate states at S.N.11 that Kalamma was not aware of the succession certificate proceeding at the Holenarsipur Court, that the attachment and sale of the debt by the Holenaraipur Court are invalid as that Court had no jurisdiction to attach and sell the property not within its jurisdiction, that the purchaser of the debt is therefore invalid and that the succession certificate obtained by virtue of that purchase is also invalid. There is a great force in these contentions. The Mysore Courts cannot attach moneys payable beyond their jurisdiction. In this case the money payable

payable is at Bombay. Hence the attachment, purchase and the succession certificate which were obtained in the State Courts without jurisdiction appear to be invalid.

(13) The succession certificate may be granted to Kalamma as it appears that she is the person having prima facie the best title thereto. The petitioner Kalamma may be directed under section 375(1) of the Indian Succession Act to give the usual security bond with one surety.

Submitted for orders. [It is for consideration whether Addl. Judge may be requested kindly to offer his opinion on the case]. (from para 9)

10.8.39

OsRao
30-IX-39

(14) Secretary

Will Addl. Judge kindly give us his opinion?

Rowlyan
2/10/39.

Additional Judge Court of the Hon'ble the Resident.

(15) I don't think we should give it to Kalamma. I feel sure that she knew all about the suit against her & the issue of notice to the purchaser of the debt. She has given false a petition here for notice, knowing that the most of the recitals are utterly false.

(16) Moreover, there is a valid decree against her

husband; & (the ~~purchaser of the~~ creditor, and
for this,
whereas the other appellants, ought to have the
debt satisfied out of the insurance money.
Kalamma has no manner of right, in equity,
to this money.

A.P.R.
9.x.31

Secretary

Mr Chetty.

(17)

Please see from para 9.

(18)

For orders whether the succession certificate may be granted to Tangabhujabaliah on his furnishing security. In the meantime he must deposit a sum equal to the fee payable under the court-fees Act in respect of the certificate applied for. The amount deposited by Kalamma shall be refunded to her.

* Please see S.N. 8 / Cor p. 14

† Section 379 Succession Act (xxxix of 25)

11.x.39.

from para 17

DSRao
9.x.39

Secretary (19) I don't see why it should be given to anyone. Please speak.

Rangaswami

21/10/39.

Phil 22/10

(20) Please see section 373(1) of the Succession Act. It appears that if there is ground for entertaining an application, it has got to be entertained and the Certificate issued to one of the parties before the Court. Under sub-section (3) of that section the Certificate may be granted to the person having prima facie the best title. That is to say among the parties before the Court, the Certificate must be granted to the persons having the best title, and it appears a Court cannot refuse to grant the Certificate absolutely. The purpose of a Notice is to invite all parties interested in the grant to come and oppose the grant if they consider that it should not be granted to the applicant. In this case a Certificate granted by the Mysore State Courts would be refused recognition by the Company in British India, and if the Resident refuses to make a grant, the monies cannot be drawn. In the circumstances, it appears the Certificate must be granted. The taking of security would safe-guard the rights of all persons who

* please see para 8 of S.N 8 / Cor p. 14

(21) would the Newspaper Quickly look at this one Gowda? I think the certificate should be granted to the applicant with security. I don't see that the question whether the applicant knew of the Court's order or not, is really relevant to this particular matter, & the Court had no power to attach moneys outside Mysore State jurisdiction. Therefore, as far as we are concerned, the money is not under attachment & applicant has the best claim.

A Ramaiyar
4/11/39.

B 4/11

Addl. Judge O/C.

(22) In granting a succession certificate, equitable considerations are not relevant. The person with the best title must be given a certificate. Claimants in equity are protected by demanding security. In this case the widow is entitled to a certificate ~~for~~ on security. An attaching creditor's remedy is against the security.

B 5/11/39.

B 7/11

Secretary (23) Make out certificate for Resident's approval, Mysore. A Ramaiyar 7/11/39.

(24)

(25)

Please see para 3 of Routine notes.

Draft certificate will be prepared for Resident's approval after security is taken from the petitioner.

Draft security bond and covering letter submitted for approval.

(26)

8.11.39

Yes, these notes may be added to notes on the file.

~~(from para 4)~~

ASRao
10.11.39

11/11/39.

Secretary.

S. N. (13) Issue.

Draft 5/11/40

Dy no 105.

S. N. 14.

Please see para 25 ante.

Draft Certificate submitted.

8/1/40

ASR
11.1.40

Resident 11.5.

f.c.

Certificate is faired and submitted for signature.

PSRao
19.1.40

25/1/40

Resident.

Rec'd

Received the certificate.

Ramamurthy
Asst. for Pol. V.
9-2-1940

Received
Assistant 20/1/41

2. That a certificate may be granted to her empowering her to collect the said debt specified in the schedule hereto, and

3. For such other reliefs as to this Hon'ble court may seem fit.

K Ramaniam
Advocate For Petitioner.
Bangalore.
Dated. 25-12-1938

L.T.M of Kalamma
Petitioner.

SCHEDULE.

1. Amount due under Endowment assurance policy No: 300165, on the life of the said deceased S. Mallaihchar, assured in the sum of Rs. 1000/- with the Oriental Governement Security Life Assurance company Limited., Bombay, after deducting the sums due to the company Rs. 994/-.

L.T.M of Kalamma
Petitioner.

I, the petitioner above named, do hereby declare that what is stated above is true.

L. T. M. of Kalamma
Petitioner.

Bangalore.
Dated. 25-12-1938

U. SUBRAMANIAM, B.A. LL.B.,
ADVOCATE.

COURT FEE INDIA 2R TWO RUPEES
Rec'd Sri Subramanyam
4-1-39
Signature of Treasurer

64

Before
~~IN THE COURT OF~~ the Hon'ble the British Resident
in Mysore, BANGALORE.

R.O.P. No: ..... of 1939

~~Plaintiff~~
~~Complainant~~
Petitioner
~~Appellant~~

Kalamma, wife of S. Mallaiah,
Halkunte, Kanchakatti Post, Dist: Dharwar
Jamkhandi District, Mysore State

Versus

~~Defendant~~
~~Accused~~
Cr: Petitioners
~~Respondant~~

Lingachar & another

I, the petitioner, above named, do hereby appoint and retain MR. U. SUBRAMANIAM, B.A., LL.B., Advocate, Bangalore, to appear, in person or by proxy, for me in the above ~~Suit~~ appeal petition and to conduct and prosecute or defend or compromise the same, and all proceedings that may be taken in respect of any application for execution of any decree or order passed therein. I empower my Advocate to appear in all miscellaneous proceedings in the above suit or matter till all decrees or orders are fully satisfied or adjusted and to obtain the returns of documents and draw any moneys that might be payable to me in the said suit or matter.

The address for service of the said Advocate is No. 1, Lushington Raoji Street, Cox Station, Bangalore

In witness whereof I have here unto set my hand this 25th day of December 1938.

L. T. M. of Kalamma.
Petitioner

Accepted
U. Subramaniam
Advocate for Petitioner

Signed before me by the executant known to me personally
U. Subramaniam

S.N.2.3

OFFICE OF THE
HON'BLE THE RESIDENT
IN MYSORE, BANGALORE.
20 JAN 1939
Diary No. 687
File No. R09(1)39

6

6½-
1 C
2 Ch

A.R.
20-1-39.

Before The Hon'ble the Resident
in Mysore, at Bangalore

R.O. Di. Sit No. 9(1) of 1938

Petitioner

Kalamma

C-Petitioners

vs Lingachar & another

In the matter of the estate of
late S. Mallacharya

Memo

In order to avoid delay the petitioner has obtained and files herewith duly sworn affidavits from the two counter-petitioners stating that they have no objection to the grant of the succession certificate.

The petitioner therefore prays that no notice need now be ordered to the C-petitioners.

Bangalore
20-1-1939

T. Ramaswamy
Advocate for Petitioner.

20

4/7

IN THE COURT OF THE BRITISH RESIDENT

IN MYSORE BANGALORE.

R. O. No. Of 1939

~~Original petitioner~~ No. Of 1939

Petitioner	Opponents.
Kalamma,	(1) Lingachar,
	(2) Basavachar.

Affidavit of Basavachar.

I know that the petitioner has filed this application for obtaining a succession Certificate to the estate of her deceased husband S. Mallaiahchar, in order to draw the money from the Oriental Governament Security Life Assurence Company Limited, due under the Endowment Policy No. 300165 standing in the name of the said deceased. The said Mallaiahchar was my ~~younger~~ elder brother and I have no objection to issue of the Succession Certificate in the name of the Petitioner.

The above signed ~~& D~~ ~~Left thumb mark~~ declarant C. Basavachari is known to me.

K.L. Narasimha Iyengar Representative Oriental Life Assurance Co

Signed & Sworn to before me.

7.1.39. Special Dist. class magistrate Tiptur.

18

IN THE COURT OF THE BRITISH RESIDENT

IN MYSORE BANGALORE.

R.O. D.J. 6

~~Original petition~~ No. of 1939.

Petitioner	Opponents.
Kalamma.	(I) Lingachar,
	(2) Basavachar,

Affidavit of Lingachar.

I know that the pettioner has filed this application for obtaining a succesion Certificate to the estate of her daceased husband S. Mallaiahchar, in order to draw the money from the Oriental Governament Security Life Assurence Company Limited, due under the Endowment Policy No. 300065 standing in the name of the said ###### deceased. The said Mallaiahchar was my younger brother and I have no objection to the issue of the Succession Certificate in the name of the petitioner. ಸಹಿ ಲಿಂಗಾಚಾರ್

declarant Lingachar.

The above Signed is Known to me.

K.L. Narasimha Iyengar
Before Authority.
Oriental Life Assurance Company
Bangalore

Signed & Sworn to before me

Special First class magistrate.

7.1.39. Bangalore.

Mr. Chetty

S. N. S.

OFFICE OF THE
HON'BLE THE RESIDENT
IN MYSORE, BANGALORE.
10 MAY 1939
Diary No. 479
File No. R.9(1)/39

(16)

The
10-5-39
(should this be
8 Comp?)

IN THE COURT OF THE HON'BLE THE RESIDENT
IN MYSORE, BANGALORE.

R.O.Dis. Filo NO. 9(1) of 1939

C. Potitionor: Tangabhujabaliah(Son of Tanga-
paddiah) accountant, Sravanabelgula Brass Industrios
and Copper Works Ltd, Sravanabelgula, Channarayapatna
taluk, Hassan District.

The Potitioner above named respectfully begs
to state as follows:

1. That he recently learnt that one Kalamma
has applied in this Hon'ble Court for grant of a
Succession certificate with respect to Policy No.
300165 of Oriental Government Security Life -
Assurance Co.,Ltd., Bombay in the name of her -
husband Mallayachari.

2. The said application of Kalamma is not a
bonafide one, but a fraudulent device to circumbent
the operativeness of the succession certificate
which has already been granted to the petitioner
in Mis. Case No. 272 of 37-38 of Holenarasipur
Munsiff Court, Mysore Province, wherein notice was
taken to the said Kalamma.

3. The amount due under the said policy was
attached after the death of the Policy holder -
Mallayachari in O.S. 333/30-31 of Holenarasipur
Munsiff Court to which the said Kalamma and the
brothers of Mallayachari were parties for a debt
due by Mallayachari himself. They had also -
engaged a counsel for defence but still there was
a decree against them. In execution of the decree
passed in the said suit, the petitioner became the
purchaser of all rights under the said policy.

15

This was in Execution No. 719/32-33 of the same Court.

4. Kalamma who now seeks the certificate is well aware of the petitioner's rights..Not only were notices issued to her by court from time to time but also intimation of the proceedings in court and the petitioner's claim for the amount from the company has been given to her by the Company itself.

5. The petitioner submits with a view to hamper, if not, maliciously prevent payment to the petitioner the present application has been filed by her and an attempt made to secure certificate from this court without disclosing the facts narrated above.

6. Although the petitioner has already obtained the certificate as stated above he is prepared to deposit all necessary amounts and satisfy other requirements for grant of a certificate to him by this Hon'ble court.

7. In any event the petitioner Kalamma has no subsisting right to seek the certificate in her favour. It is only the petitioner who is entitled to it according to law.

8. Petitioner applied for a certificate in Holenarasipur Munsiff's Court as the Policy holder died within its jurisdiction. The certificate/has obtained been sent to the company for payment to be made to him. As the company which has to make payment is likely to show preference to a certificate of this Hob'ble court it is Prayed that the same may kindly be granted to the present petitioner.

I the petitioner abovenamed do hereby declare that what is stated above is true to the best of my knowledge and belief.

R. Venkata Ramaiya
Advocate for Petr.

Before me

IN THE COURT OF THE MUNSIFF, HOLENARASIPUR

Mis. Case No. 272/37-38

Petitioner: Tangabhujabaliah Son of Tanga-Paddiah, residing at Sravana-bolgula, Jain by caste, aged about 38 years.

Opponent: Nil.

Application under Succession Certificate Regulation 1911, Sec: 6.

The Petitioner begs to state as follows:

1. That he has purchased the Life Assurance Policy mentioned in the Schedule in this Hobbbbb Court in O.S.333/30-31 and Ex. 719/32-33 and Prays that succession certificate may be issued to him.

2. The bond holder Mallayachari died in Sravanabolgula. He has not left any will.

3. That decree has been obtained and Execution sued out against the deceased Mallayachari's wife and brothers as his legal representatives.

Schedule

Oriental Government Security Life Assurance CO.Ltd., Bombay, Policy No. 300165, Rs. 1000/- on the life of S. Mallayachari, since dead in 1930 and has not left any will which is an - impediment.

Sd/ K.Sivarama,
Pleader for Petitioner.

Sd/ Tangabhujabaliah.

The statements contained above are true to my knowledge and belief. Holenarasipur dated 26-2-38

Sd/ Tangabhujabliah.

Copy

Form No. 15 Civil.

9

IN THE COURT OF THE MUNSIFF AT HOLENARASIPUR

O.S. No. 333 of 1930- 31

Plaintiff: Sravanabelgula Brass Industries and
Copper Works Ltd., Sravanabelgula
by its manager C.B. Bhujabaliah

Defendants:

1. Mallayachari S/O Siddachari,
since dead by his legal -
representative his widow
Kalamma.
2. Basavachari brother of
Mallayachari
3. Ningachari, brother of 2nd -
defendant.

Suit to recover Rs. 517/15/6 principal and Rs. 54/- interest with costs and current - interest from the assets in the hands of the defendants due on an on demand pro-note executed by the deceased Mallayachari. Suit is filed on 17th February 1931.

The suit coming on this day for final disposal before T.N.Mallappa, Esquire, B.A.,LL.B., Munsiff in the presence of Mr. K.Sivaramia, for plaintiff and Mr. N. Krishnaswamy, retired for want of - instructions for defendant and defendants being absent exparte, it is ordered and decreed that the plaintiffs do get from the assets of Mallaya-chari in the hands of the defendants the sum of Rs. 551-15 - 6 with costs and interest on 517/15/6 till date of suit and current interest at 6% on the aggregate from the date of suit till date of payment and that the defendants do pay a sum of Rs 76 - 15 - 0 towards costs incurred by plaintiff in the suit as detailed below.

Given

Given under my hand and the seal of the court, this 14th day of July 1931.

Sd/ T.N. Mallappa,

Munsiff.

Cost of suit
****

	Plaintiff	Defendants
Stamp for plaint	Rs, 56 - 0 -0	
Stamp for Vakalat	0 - 8 - 0	0-8-0
Stamp for application	0 -12 - 0	
Stamp for process	3 12 - 0	
Adjournment costs	2 - 0 - 0	
Pleaders fee	13 -13 - 0	
Total	76 -13 - 0	0-8-0

Amount to be recovered as costs by the plaintiff from the assets of the deceased Malleyachari is Rs. 76 - 13 - 0

Sd/ T.N.Mallappa,

Munsiff.

" True translation "

OFFICE OF THE
HON'BLE THE RESIDENT
IN MYSORE, BANGALORE.
4 JUL. 1939
Diary No. 6801
File No. R.D.9(1)39

SN. 11

41

P.R. 4.7.39

M. Chetty.

BEFORE THE HON'BLE THE RESIDENT IN MYSORE
BANGALORE.

R.C. (Dis) File No. 9 (1) of 1939.

PETITIONER. COUNTER-PETITIONER.

-VS-

Kalamma. Lingachar and another.

In the matter of the estate of Malliachar deceased.

******

The petitioner abovenamed begs to file the following in reply to the objections filed by the creditor Thangabhujabalian.

1. The petitioner is not at all aware of the Succession Certificate proceedings in the Hole-Narasipur Court. No notice was taken to her. The copy of the proceedings and order sheet of the Holenarasipur court itself shows that no counter-petitioner was at all shown - originally, but it has only at the instance of the said court that notice, by substituted - service, was affixed to her residence. This - shows the want of bona - fides of the creditor.

2. The attachment and sale of the debt by the Hole-Narasipur Court are in themselves invalid as that court had no jurisdiction to - attach and sell a property not within its jurisdiction. The money is and was payable only in Bombay and not in Hole-Narasipur according to terms of the policy. The purchase of the debt by Thangabhujabaliah is therefore invalid

BEFORE THE HON'BLE THE RESIDENT
MYSORE, BANGALORE.

R.O.(Dis) File No. 9 (1) of 1939.

Between

Petitioner:-

Kalamma.

and

CCunter-Petitioner:-

Lingachar and another.

Reply statement of Petitioner

Filed on:-

U.SUBRAMANIAM B.A., LL.B.,
Advocate for Petitioner,
BANGALORE.

SN.12

43

19-7-39

M. chetty.

OFFICE OF THE
HOUSE THE RESIDENT
IN MYSORE, BANGALORE.
19 OCT 1939
Diary No. 7408
File No. R.P.90/39

In the Court of the Hon'ble The Resident

Bangalore

R. Dis: File No. 9(1).9 1939

In the matter of the Estate
of the late S. Mallikarjunaiah

Petitioner:- K Lakshmana

vs

Respondent:- ~~Mallikarjunaiah~~ Lingaraja Urs and others

Memo.

The petitioner above named prays that she may be permitted to file an additional statement in reply to the objections of the creditors in 10 days.

Bangalore
19-7-1939

C Srinivasaiengar
Advocate for Petitioner

SN. 44.

Ja

3/1

/46

GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE

General and Revenue Secretariat

Dated, Bangalore. 2nd January 1940

No. Col 920 Encl 1
cts 96-39

Mr. Chitty

R. G. (1) 39

From

C. Subramanya Aiyar, Esquire, B.A., B.L.,
Secretary to the Government of His Highness
the Maharaja of Mysore.
Law Department.

To

The Secretary to the Hon'ble the Resident in Mysore,
Bangalore.

OFFICE OF THE HON'BLE THE RESIDENT IN MYSORE, BANGALORE.
3 JAN
Diary No. 105
File No.

Sir,

SN. 13

With reference to your letter No. R. Dis. F. 9 (1)-39/Judl. dated the 17th November 1939, I am directed to forward herewith the security bond executed by Kalamma and K.L. Narasimhaiya (Surety) and to state that it is reported that the Surety is acceptable.

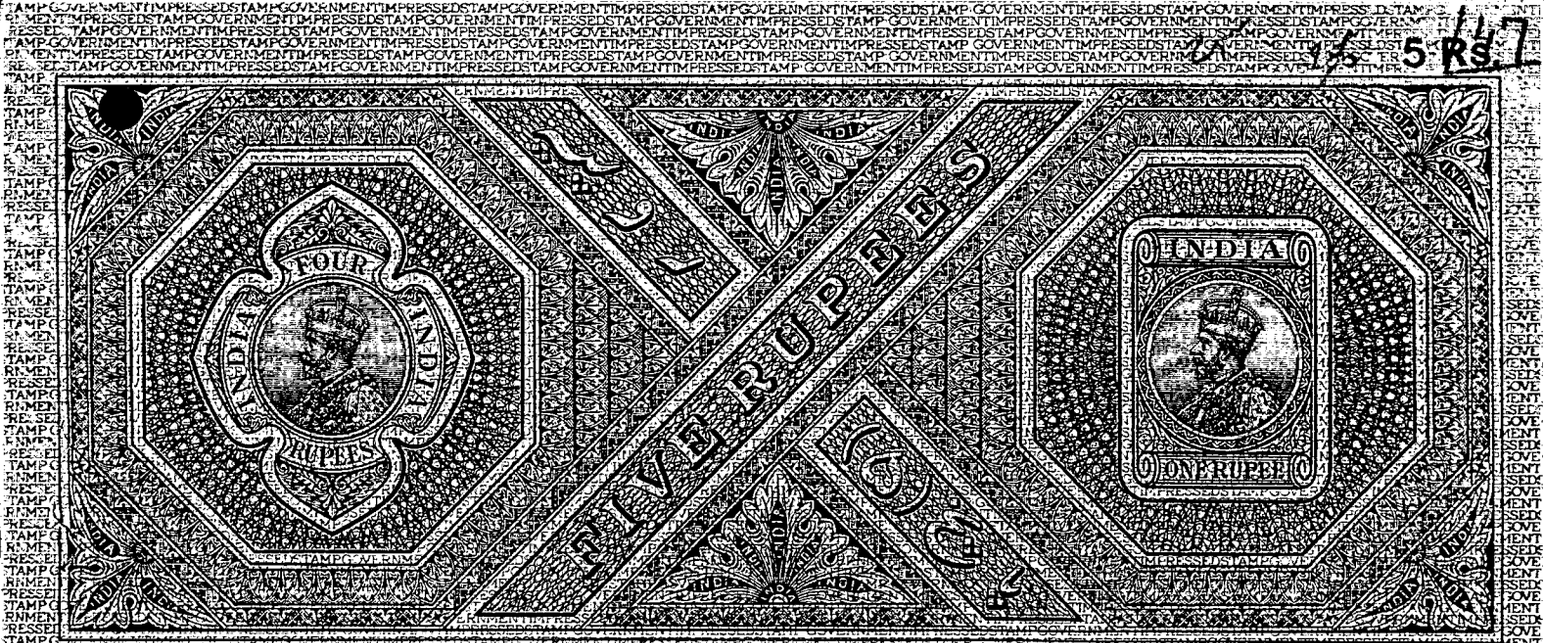
I have the honor to be,

Sir,

Your most obedient servant,

for Secretary to Government,
Law Department.

P.H.



BEFORE THE HON'BLE PRESIDENT IN MYSORE AT BANGALORE.

Application No. 125 of 1935 for a certificate under section 372 of the Indian Succession Act, 1925 (Act XXXIX of 1925), in the matter of the estate of Kalliachar, who was ordinarily resident at Shravanabelagola, Channarayapatna Taluk, Hassan District, now deceased.

Applicant Kalamma, widow of Kalliachar residing at Halkurki, Honnavalli post, Tiptur Taluk, Tumkur Dist.

Name and address

Know all men by these presents that we, (1) Kalamma wife of Kalliachar residing at Halkurki, Tiptur Taluk (applicant, and (2) K.L. Narasimhaiya, Land-Holder and representative Oriental Govt Security Life Assurance Company, Ltd., Surety, are jointly and severally bound to the British President in Mysore for the time being, in the sum of Rs. 222/- (Rupees two hundred and ninety four only) to be paid to the said British President in Mysore, for which payment to be made we bind ourselves and each of us, in the whole and each of our heirs, executors and administrators, jointly and severally.

THE SOLE TREASURY
No.
16 DEC 1939
BANGALORE

Sold to Kalamma.

Treasurer
16/12/39

Dated this 19th. day of December 1939.

Now the condition of the above written bond is such that if the said Kalamma shall within one year from the grant to of a certificate under the Indian Succession Act 1925, exhibit in the office of the said British Resident in Mysore, a full and true account of all moneys received on account of the estate of the late Lalliachar of the value of Rs.994/- and shall deliver and pay the same unto such person or persons as shall be lawfully entitled thereto, then the above bond shall be void and of no effect, otherwise, it shall remain in full force.

Witnesses.

(1.) [illegible]

(2.) [illegible]

Left thumb impression of Kalamma

Signature of applicant

Signature of Surety & address.

My pers Stamp duty Rs. 7-8-0 has been received vide Treasury Challan No. 18 dated 19-12-39

Dated this 19th day of December 1939.

Now the condition of the above written bond is such that if the said Kalamma shall within one year from the grant to of a certificate under the Indian Succession Act 1925, exhibit in the office of the said British Resident in Mysore, a full and true account of all moneys received on account of the estate of the late Lalliachar of the value of Rs.994/- and shall deliver and pay the same unto such person or persons as shall be lawfully entitled thereto, then the above bond shall be void and of no effect, otherwise, it shall remain in full force.

Witnesses.

(1.) [illegible]

(2.) [illegible]

Left thumb impression of Kalamma

Signature of applicant

Signature of Surety & address.

DEC 1939

District Treasurer